



Civilian Police Advisory Board Study Committee

Date: September 8, 2021

Time: 7:00 PM

Location: Conducted by Remote Participation

Attendance

Karen Bishop	
Anne Brown	p
Michael Brownstein	p
Elliot Elkin	p
Kerrie Fallon	
Julie Flaherty*	p
Laura Gitelson	p
Jillian Harvey*	p

Doug Heim*	p
Carlos Morales	p
Mona Mohtadi	p
Sanjay Newton	p
Bob Radochia	p
Kathy Rogers	p
Clariss Rowe	p
Susan Ryan-Vollmar	p

* - non-voting member | p - present

Agenda

The meeting was called to order at 7:07pm

(Laura Gitelson) notes that we will take the agenda out of order compared to what was posted so as to respect the time of our guests.

1. Introduction to APD Collective Bargaining Agreements - Sandy Pooler, Deputy Town Manager and Caryn Malloy, Director of Human Resources
(Sandy Pooler) thanked the committee for its interim report. This is hard work but consistent with the progressive forward thinking he has seen in his five years in town. Sandy and Caryn Malloy negotiate with the various town unions as a team. Sandy is more focused on the financial side and Caryn has more expertise in the other provisions. Sandy knows that there was a request to circulate the collective bargaining agreement, but not sure if that has been done

yet. He expects that the current agreement will not necessarily be very informative for our current work, as most of the issues he expects we might ask about have not been bargained over previously.

A contract is a meeting of the minds between two parties. The Town and Union have to come to a shared agreement about the terms and conditions of employment. Town cannot unilaterally decide terms and conditions of work.

There is “impact bargaining” where the town has the ability to make a change and then negotiate the impact. Much of what might be considered by this committee is more likely to fall under the category of “decision bargaining” where you’re starting from zero and have to come to a shared agreement.

To the extent that any Citizen Panel would be involved in imposing discipline or being involved in their due process rights, that would require bargaining. On the other hand, in a more ombudsman role that was less focused on specific cases, there would be room to do things without bargaining. Sandy mentioned that one of the things he learned in law school was the phrase “it depends.” Sandy and Caryn are very willing to offer their opinions, but can also consult with Labor Counsel if needed.

Politically, unless the Union has bought in from the beginning they may raise their own objections or attempt to contend that things are subject to bargaining. Even if they are not correct, that can take time to resolve.

Sandy mentioned that we’d asked him about collective bargaining, but he wanted to share a point that was related to the framework of accountability and authority within the department. Any kind of outside entity which interferes in the Chief’s and the Town Manager’s ability to impose discipline and communicate could be deleterious to those relationships. Sandy urged us to maintain the authority of the Chief so that she can do her job well. If we think that the Chief is not doing her job well, then we should replace the Chief.

Sandy and Caryn spend a lot of time in their discussion with all of the town unions talking about communication and respect and understanding who makes decisions.

(Caryn Malloy) did not have anything to add.

(Clarissa Rowe) noted that one of the things that came into play with the Pedrini case was the history of case law. She asked Sandy, Caryn or Chief Flaherty to comment on the ramifications of that for us.

(Sandy Pooler) Police and Fire have a right to arbitration. Arbitration is a “sticky wicket” and the results are often unpredictable. The town has sometimes done

well there and sometimes not done well at all. All municipal employers tend to try to avoid it at all costs. Over the years there has been dissatisfaction with decisions by arbitrators around the state. It is his feeling that there is a bias toward employees in arbitration. In Sandy's experience there is not always sufficient attention to detail among certain arbitrators. A lot of what they do when they go into arbitration is education for the arbitrators. There is also a concern that arbitrators feel a need to "split the baby" so that they will continue to be hired to arbitrate.

(Caryn Malloy) There are all of these individual arbitration awards from these individual departments across the commonwealth. One of the things she is hopeful about in the future is that with Police Reform setting standards there could be better case law established as they have seen come out of Education reform. She is hopeful that this new environment will allow there to be better decisions to reference instead of just good luck to know about decisions in other communities.

(Clarissa Rowe) One of the difficult things is how complicated this is. The labor issues affect how we run the town. She has been involved for a long time and knows it's complicated. It does color how we've had to deal with "bad apples."

(Carlos Morales) Does police reform at the state level affect our Collective Bargaining Agreements? What is the difference between how a change in State Law affects us vs. a Town Bylaw change?

(Caryn Malloy) State Law has not had any effect on bargaining so far. It may affect us in the future. She would like the Chief to comment as well. Caryn has enjoyed participating in this discussion, but unfortunately must leave for another town meeting.

(Sandy Pooler) The legal issue is fundamentally the contract clause of the U.S Constitution. We can't unilaterally change the terms of the bargain. We can get into some tricky issues when State Law changes things.

(Doug Heim) One of the big things that can be overlooked is that the state is going to create an accreditation process. There is an interesting legal question about whether civil service or collective bargaining can protect employees since it's not a bargaining matter. It is a predicate for serving as an officer in Massachusetts. This is still a somewhat open question, but it is very likely that employees would not be able to assert collective bargaining rights and the town would be able to fire them if they lose accreditation. This is what we see in other occupations.

(Kathy Rogers) is still learning, but has bargained successfully for 20 years. Would a provision that says losing accreditation leads to firing be something that could be negotiated?

(Sandy Pooler) That will likely be resolved through either case law or further legislation. We will not likely need to negotiate that individually.

(Kathy Rogers) thinks that this is a timing problem for the committee. The committee has to make recommendations in 6 months or less. It sounds like the committee is going to have to think about how this is interpreted by unions and towns and courts all the way up to the SJC. That's a very long time to wait.

(Sandy Pooler) thinks that the unions will be unwilling to agree to any changes while there is any ambiguity in state law.

(Kathy Rogers) appreciates the candor and thinks that's a very important point. How do we deal with "Bad Apples?" That is one of the purposes of what this group is supposed to study. She understands there are real limitations here but still wondering how we as the committee make our recommendations while both appreciating what they've said and not abandoning the charge we have.

(Sandy Pooler) Good luck.

(Chief Julie Flaherty)'s current understanding is that once an officer is decertified by the state they are not eligible to be employed as an officer.

(Clarissa Rowe) thinks that Kathy is right to be worried about what we present to Town Meeting, but the world is changing right now. Our draft report is doing a really good job. Our State Senator Cindy Friedman is a real advocate for police reform and we just have to be patient and give them time to work. She doesn't think we can have all of the answers by Town Meeting.

(Sanjay Newton) doesn't think we can tell Town Meeting and the Town to just be patient. We have to do our work being mindful of the changing landscape around us and the constraints on us.

(Clarissa Rowe) agrees that we shouldn't tell people to be patient. Her philosophy is "speak up" not "be patient." And we should do that. She doesn't think we can present something fully baked to Town Meeting.

(Sanjay Newton) points out that there are always unknowns. Nothing that comes to Town Meeting is ever fully baked. The world continues to change around us. He thinks that anything presented to Town Meeting is their best attempt based on current understanding. Sanjay says our job is to present the best option to Town Meeting based on the world as we understand it now. There is room to tell Town Meeting what we're unsure of. What we recommend today may not be the right thing in the future and Town Meeting will have to make changes. Sanjay doesn't think we should be so wedded to the idea that

what comes out of this committee will be perfect that we get stuck in recommending anything.

(Carlos Morales) says that we're now talking about execution. He wonders at what point, and in what way, and if, we could engage with the unions to gauge their response. Will start with Sandy and Caryn first, of course. But beyond that?

(Sandy Pooler) does not have a simple answer. If the Town is talking to the unions, they can only talk to the union leadership. They are limited in their role as the employer. It's an interesting question - if this group wanted to get union input at some point. Sandy will consult with Caryn and Labor Counsel and get an answer with specifics. Sandy is generally in favor of talking to people. At the end of the day, if the areas you touch don't cross into mandatory bargaining then you don't have to talk to the unions.

(Sanjay Newton) asks if we can be provided a list of things that would require bargaining with the understanding that there is often disagreement about that topic.

(Sandy Pooler) would say as a general overview that changing the terms and conditions of employment becomes bargainable. For example the chief has disciplinary rules and recommendations. If the committee tried to change them it would be subject to bargaining as they are terms and conditions of employment. The Chief does have management rights to change some things. She can assign particular shifts, but bidding for shifts annually is part of the contract. Same thing with disciplinary hearings. There is a grievance procedure within the contract for management actions.

Sandy mentions that we don't have a fully integrated contract right now. He knows that Caryn is working on getting a fully integrated contract signed by both sides. It's a very typical issue in cities and towns not to have those, but there should be something they can get the committee. Sandy underlines that the disciplinary process is outlined in the contract and so changes to that would require bargaining. On the other hand, civilian review and comment on the department's processes would not. He is giving his opinion and will consult with labor counsel. He believes that if a body wanted to review previous cases and publicly affirm that they were all decided fairly, that would not need to be bargained. But Sandy believes we'd be getting into a grey area if a body were to publicly state that some cases were fine but a specific one was decided poorly.

(Sanjay Newton) asks whether that's the case even if the body is just offering comment and not imposing specific discipline.

(Sandy Pooler) would like to pursue that question with Labour Counsel because he thinks that's an edge case. Sanjay as an individual would have every right to comment on an individual case, but once there is a Town Body then it starts to get into a grey area. It's not a bright line rule, but we can follow up with Labor Counsel. Sandy notes that we can focus what we ask to Labor Counsel based on what the committee is considering.

(Laura Gitelson) asks whether a hypothetical town body that comments on policies and procedures rather than the actions of specific officers would possibly be subject to negotiation.

(Sandy Pooler) thinks that is one of the things that would not require negotiation.

(Bob Radochia) asks how often the contract is negotiated.

(Sandy Pooler) answers that generally the contracts run three years.

(Sanjay Newton) asks whether record access would be subject to negotiation?

(Sandy Pooler) answers that certainly any potential body could have access to public records. More records than previously are considered public records now under the new police reform law. More records than that is a question that deserves some conversation.

(Doug Heim) describes how Cambridge's process works. Professional standards does the review and the part that's negotiable is likely that there's an extra hearing process. In contrast in New York there can be a separate investigation and officers have a collectively bargained right to have counsel present during those interviews. What's difficult for everybody is that there are parts that might not affect collective bargaining. Our professional standards division already conducts investigations, but in Cambridge there's another body that receives that investigation. In New York there's a separate body to both investigate and hold hearings. That is definitely a bright line area that is subject to collective bargaining. It's a closer question whether a body which just receives information and talks about it would be subject to bargaining.

(Sanjay Newton) asked whether there were questions from committee members who haven't spoken.

(Laura Gitelson) thanked Sandy for taking the time to attend and present.

2. Approve minutes from prior meetings

Vote: to approve August 24th, 2021 meeting minutes

Minutes approved unanimously (Clarissa Rowe abstained)

3. Updates from committees/constituencies

There were no updates from committees and commissions.

4. Amendment to Interim Report - Susan Ryan-Vollmar

(Susan Ryan-Vollmar) has drafted an amendment to the interim report to include a section on the current complaint process.

(Kathy Rogers) would like to confirm her statements with the leadership of the Human Rights Commission before the statement goes public. She didn't confirm with them before her memo in June.

(Susan Ryan-Vollmar) suggested that we take it up at our next meeting.

(Sanjay Newton) would like to reorder two paragraphs in the section discussing the AHRC website. Sanjay also thanked Susan for noticing that we had not included this in the report and drafting the amendment. He thinks this is really important for us to have in there.

5. Public Comment Plan - Susan Ryan-Vollmar

(Susan Ryan-Vollmar) has four tools that she would like us to use to solicit input. If we can agree on the tools then we can move forward and implement it. Susan reviewed the groups which have representation on the committee. We can solicit input from them in a fairly structured process.

First, each of us from a commission can share the work we've done so far and then ask two questions. "Consistent with the historic mission of your commission, what information do you believe is important for the committee to understand about the community you represent?" and "What are your hopes and expectations for the committee?" It would then be up to the commission to decide how to respond, whether that's a memo, or if they want to hold a meeting themselves.

Second, listening sessions with constituencies who are not represented on the committee including the faith community, veterans, immigrants and refugees, police officers, people who live in public housing (who were originally supposed to be represented on the committee, but aren't), and possibly a session in the second-most spoken language in town. Susan is hoping there will be volunteers who will be willing to meet with people.

Third, send an email through town sources soliciting written feedback on the same questions.

Fourth, hold an open meeting for anyone in town. We all know these events may attract people who have an axe to grind and others might not be paying attention but it's up to us to spread the word.

(Laura Gitelson) thanked Susan for pulling all of this together. She shared that she's very grateful that we have Susan's expertise to help us effectively use this time and gather input.

(Carlos Morales) thanked Susan and asked that she share written bullets. He thinks it's fantastic that she's proposing that right mix of pieces. He would like to hear others' comments on how to actually do it.

(Sanjay Newton) thinks that three of the items are fairly straight forward. The listening sessions are difficult, but we can do our very best.

(Susan Ryan-Vollmar) knows there are people we can all and invite and ask.

(Sanjay Newton) would like to see us divide into pairs and assign those pairs specific outreach. We can't do that as a full committee for logistical and for comfort reasons. Perhaps Susan could divide us up into pairs and assign us communities?

(Laura Gitelson) likes the idea of smaller groups, especially for efficiency and to be able to tailor the listening to specific communities.

(Susan Ryan-Vollmar) and Laura will divide up the committee and the communities and send out assignments.

(Doug Heim) notes that he's available for whatever we need and trusts the chairs to decide what is the best use of staff time.

(Chief Flaherty) is also happy to help coordinate. She also comments that she really likes having all of the avenues. APD responds to approximately 30,000 calls a year and has a lot of interaction with people. Using these tools should help solicit opinions from people who have had interactions with police.

(Susan Ryan-Vollmar) asks whether we need to vote on this plan.

(Doug Heim) indicates that we do not need to vote on this.

6. Communication Update - Susan Ryan-Vollmar

(Susan Ryan-Vollmar) notes that some of our early meetings were lost, but almost half of our meetings are now available from ACMi. Sanjay was recently interviewed by AMCI's James Milan. That interview hasn't aired yet. We will soon publish the interim report to the town website along with documents and sources we've referenced. Susan notes that Carlos and Eliot have really talked about having smaller bits to be able to share with people. In that spirit Susan has created a series of blog posts pulled from the interim report. We can ask the Advocate and YourArlington to publish them and we can publish them on community facebook groups and perhaps town newsletters. Perhaps we could write things for some of the Town's social media channels?

(Jillian Harvey) notes that blog posts can go on the committee page on the town website. Videos can go there too using vimeo. Other pages can be redirected there as well.

(Doug Heim) acknowledged the thought and time and skill that has gone into planning all of this and thinks it's an excellent plan. Doug put on his lawyer hat and reminded the committee that the open meeting law applies to social media and so it's important to be mindful of discussing this in facebook groups that might have a quorum of members. A quorum is unlikely given the size of the committee, but just a reminder to be careful.

(Sanjay Newton) thinks this plan sounds great.

(Laura Gitelson) likes pushing out as much information as makes sense while we are organizing the feedback sessions. The more information we can give people who may not read the whole report, the more productive the feedback can be.

(Doug Heim) hopes that whatever smaller pieces are put out there have a link to the full report. One of the things he's seen in the context of Zoning, which is also complex, is that there is a lot of important stuff in the details. This committee has thought about many things and he hopes we will link back to that.

(Susan Ryan-Vollmar) notes that all the posts she has written so far link back to the report.

(Sanjay Newton) notes that it's really important to do as much work as we can now to bring people along with the knowledge we've gained and how we're coming to our recommendations so that we're not just dumping a report on people at the time of Town Meeting.

(Laura Gitelson) notes that we've reached the end of the agenda.

(Sanjay Newton) has two new business items. He has started a draft executive summary of our interim report and would like to circulate it before our next meeting. He also noted that there were questions at our last meeting about the context of the creation of the committee. As he's one of the Town Meeting Members appointed to the committee, he is gathering his recollections of the process and history to share as a memo with everyone.

(Susan Ryan-Vollmar) shares that we have scheduled Chief Wynn from the Pittsfield Police Department and the POST commission to speak to us and take questions at our next meeting.

(Laura Gitelson) reminds us that our next meeting is Monday September 20th. The zoom link is on the town webpage already, but she will send it out as well.

(Jillian Harvey) notes that many of the committees and commissions will not have met before our next meeting and so committee updates will likely come in October.

(Sanjay Newton) suggests that there be two October meetings, one for community input and one for regular business. He will send a poll for dates.

7. Adjourn

Vote: to adjourn at 8:27pm

Approved unanimously